

SUPPLEMENTAL UNEMPLOYMENT BENEFITS

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The Ohio Legislature, in its most recent session, passed not one, but two bills relating to supplemental unemployment benefits.

The basic act¹ amends Section 4141.35 to the Revised Code, which includes a provision for the cancellation of waiting period and the repayment of benefits under certain circumstances, so as to provide that no order cancelling a waiting period or requiring the repayment or withholding of benefits shall hereafter be made, nor shall such cancellation, repayment or withholding hereafter be required, by the administrator solely because private unemployment benefits have been or will be paid with respect to weeks prior to the effective date of the amendment, under arrangements or plans described in Section 4141.36. The same act amends Section 4141.36 to read as follows:

Sec. 4141.36. No agreement by an employee to pay any portion of the contribution or other payment required to be made by his employer under sections 4141.01 to 4141.46, inclusive, of the Revised Code, is valid. No employer shall make a deduction for such purposes from the remuneration or salary of any individual in his employ. Such sections do not affect the validity of private voluntary arrangements or plans by which employees individually or *** collectively agree to make *** payments for the purpose of securing private unemployment benefits in addition to *** the benefits provided by sections 4141.01 to 4141.46, inclusive, of the Revised Code ***, or the validity of private arrangements or plans under which employers make payments for such purpose. Private unemployment benefits paid under such arrangements or plans shall not be construed to be compensation for personal services under Sections 4141.01 to 4141.46, inclusive, of the Revised Code and benefits otherwise payable under such sections shall not be denied or reduced because of the receipt of private unemployment benefits under such arrangements or plans. The provisions in sections 4141.35 and 4141.36 of the Revised Code pertaining to private arrangements or plans under which employers or employees contribute for the purpose of providing private unemployment benefits in addition to the benefits provided by sections 4141.01 to 4141.46, inclusive, of the Revised Code, shall apply to all applications and proceedings, including those now pending or hereafter instituted.

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¹ Amended Senate Bill No. 53, passed and approved on March 19, 1959, filed with the Secretary of State on March 20, and effective June 19, 1959.

The second enactment² was passed as a temporary, emergency measure to permit the payment of supplemental unemployment benefits for weeks already accumulated, without having to wait for the June 19th effective date of the basic amendment. This act authorized and directed the Administrator of the Bureau of Unemployment Compensation:

(a) To recognize the validity of voluntary arrangements or plans by which employees and employers, individually or collectively, agree or have agreed that certain sums of money be paid into a trust fund for the purpose of securing private unemployment benefits in addition to the benefits provided in sections 4141.01 to 4141.46, inclusive, of the Revised Code;

(b) Notwithstanding the provisions of sections 4141.35 of the Revised Code requiring cancellation of waiting periods and repayment of withholding of benefits, to pay unemployment benefits in accordance with the provisions of sections 4141.01 to 4141.46, inclusive, of the Revised Code, without deduction of the amount of the additional private unemployment benefits described in section (1) (a) of this act whether the payment of such private unemployment benefits is made weekly or at other intervals and regardless of how such payment is computed or of the period with respect to which such payment is made and not to order cancellation of waiting periods or repayment of unemployment benefits heretofore allowed or paid because an applicant hereafter receives such additional private unemployment benefits.

Thus, for the first time in Ohio, supplemental unemployment benefits became available to unemployed workmen without resulting in the complete cancellation of, or a deduction from, the benefits due under the Ohio Unemployment Compensation Act. A large number of workers, undoubtedly in the thousands, in such industries as steel, rubber and auto manufacturing, were directly affected, and a review of the legal problem which gave rise to these enactments should be of interest. This new phenomenon, combining private contractual payments with state benefits, is national in scope and may have even greater significance in the future. It is similar in effect to some of the private pension plans dovetailed with federal retirement benefits under the Social Security Act.

Until the enactment of these amendments, Ohio was one of a very few states which had failed to permit the concurrent payment of state unemployment insurance and private unemployment benefits of the type

² Amended Substitute House Bill 820, passed May 5, 1959, approved May 7, 1959, and filed in the office of the Secretary of State on the same date. By virtue of its emergency clause, this bill became effective on May 7, 1959. Because of its temporary nature, to be in force and effect only until June 18, 1959, pursuant to the express terms of Section 2, the act was not assigned a Code sectional number.

adopted by most of the Ohio employers having supplemental payment plans.³

The subject of supplemental unemployment benefits is not new on the Ohio scene, and an understanding of the history and significance of the present plans is necessary to an appreciation of the interest in them.⁴

Actually, supplemental unemployment plans grew out of, and are similar to, the guaranteed annual wage plans which have been adopted by some industries. A guaranteed annual wage plan is one under which the employer agrees to furnish either employment or wages during a specified number of weeks during the year for all, or a defined group, of his workers.⁵ Most guaranteed annual wage plans are administered entirely by the employer and are financed on a pay-as-you-go basis. The supplemental unemployment benefit plan, on the other hand, is not a guarantee of employment or earnings; it is rather a supplement to payments due under the state unemployment insurance laws during periods of unemployment. In most instances, supplemental unemployment benefit agreements involve employer financed trust funds administered by an independent board, from which the benefits are paid.

One of the first guaranteed annual wage plans in this country was put into operation in 1894 under the joint sponsorship of the National Wallpaper Company and the Machine Printers and Color Mixers Union,

³ Forty-three states have now taken action of one kind or another permitting supplementation of state unemployment benefit payments by private payments under supplemental unemployment benefit plans of the so-called Ford type. Prior to 1959, only four states had prohibited such supplementation,—Indiana, North Carolina, Ohio and Virginia. Indiana, like Ohio, enacted legislation early in 1959 specifically permitting such supplementation. In Indiana's case, the 1959 amendment replaced a prior amendment specifically prohibiting supplementation. Bureau of Employment Security (Department of Labor) [Hereinafter referred to as BES] Bulletin No. U-172, Supplemental Unemployment Benefit Plans and Unemployment Insurance, 11 (1957).

Much of the historical and factual material in this article has been obtained from this source. The bulletin outlines many of the interesting details of these plans, including useful tables and charts. An addendum is attached to Unemployment Insurance Program Letter No. 541, dated October 13, 1959, which brings the factual material down to date. The bulletin was prepared primarily for the benefit of state employment security agencies, but additional copies may still be available at the Bureau's central office in Washington, D. C. The original bulletin also contains an appendix listing the large number of selected readings on guaranteed employment and supplemental unemployment benefit plans. See, also, 1 C. C. H. UNEMP. INS. REP., FED. § 2300 (1959).

⁴ Bills on this subject were introduced in the Ohio legislature in 1955 and 1957, but failed to pass. A provision specifically permitting supplementation of state unemployment benefits was also included, along with other amendments to the Unemployment Compensation Act, in the referendum proposal which was submitted and defeated at the polls in November, 1955.

⁵ For employees working at an hourly rate, the guaranteed "wage" is figured on the basis of the hourly rate at straight time.

and similar plans were adopted by Proctor and Gamble in 1923, Hormel in 1931, and Nunn-Busch in 1935.⁶

Unemployment insurance legislation, both state and federal, and the federal Fair Labor Standards Act, have recognized the existence of guaranteed annual wage arrangements and have made specific provision for special treatment wherever these plans exist. The original Wisconsin Unemployment Insurance Law contained a provision which released employers who guaranteed at least thirty-six hours of work per week for a period of not less than forty-two weeks out of the year, from the requirement of setting up reserve accounts in the state unemployment fund. The unemployment insurance titles of the Social Security Act and the Internal Revenue Code provide for the approval of state unemployment insurance laws which grant lower rates to employers who have agreed to maintain guaranteed employment accounts under which all employees will receive not less than thirty hours of pay for forty weeks in the year, with one hour a week deducted for each added week guaranteed. Many states disregard this provision, but some, including Wisconsin, California, Florida, Idaho, Indiana, Minnesota and Oregon, did take advantage of the federal alternative and included similar provisions in their state unemployment insurance laws. The federal Fair Labor Standards Act exempts employers from its overtime pay provisions if they are operating under a union agreement guaranteeing employment on an annual or semi-annual basis, provided certain minimum standards are met.

Despite the concessions made for these plans in this legislation, substantial additional interest has not been apparent. The Latimer report⁷ indicates that in 1947 there were approximately 196 guaranteed annual wage plans in existence. The plans concerning which information could be obtained, 188 in number, covered roughly 61,000 workers. It is reported that a few new plans of this type have been initiated since 1947, and some of those previously in existence have been discontinued, but it is estimated that not more than 80,000 workers are covered by plans of this type at the present time.⁸ As a result, neither the state employment security agencies nor the Wage and Hour Division of the Department of Labor have had very much experience with guaranteed employment plans.

Insofar as state unemployment benefits are concerned, in the few instances in which the question of concurrent guaranteed annual wage payments and state unemployment benefits has arisen, it has been held that the latter were not payable; usually on the basis that the claimant was not unemployed in the defined sense during weeks with respect to

⁶ BES Bulletin No. U-172, 1.

⁷ Murray W. Latimer, Research Director, Office of War Mobilization and Reconversion, *GUARANTEED WAGES—REPORT TO THE PRESIDENT BY THE ADVISORY BOARD* (1947).

⁸ BES Bulletin No. U-172, 2. For an explanation of this, see Eberling, *GAW and Unemployment Compensation*, 8 *VAND. L. REV.*, 458, 460-61 (1955).

which payments under a guaranteed annual wage plan were made.⁹

The idea of supplemental unemployment benefits arose as a compromise with demands for the guaranteed annual wage. As early as 1943, the United Steel Workers of America began to negotiate for a guaranteed annual wage plan as a part of the provisions sought in their new collective bargaining agreement with the steel companies. This demand, along with the others, was submitted in 1944 to the National War Labor Board. A panel was appointed to study the proposals and to hear arguments pro and con, and after receiving the panel's report, the Board declined to grant the request for a guaranteed annual wage plan. In December of that year, however, the Board did recommend the appointment of a special commission to make a study of guaranteed annual wages, which resulted in the Latimer Report, previously referred to. The Union's efforts to win a guaranteed annual wage plan continued after World War II, at which point other large unions joined the campaign, particularly the Auto Workers and the Electrical Workers.

In 1954, the subject of a guaranteed annual wage became a primary issue between the UAW and the large auto manufacturers. In April of that year, the UAW prepared and released a description of the guaranteed employment plan which would be sought at the bargaining table when the subject of a new contract came up.¹⁰ Negotiations between the UAW and the Ford Motor Company began in earnest in May, 1955, and from these negotiations arose the first supplemental unemployment benefit agreement, often referred to as the Ford SUB Plan.

The Ford plan for supplemental payments is administered by an in-

⁹ BES Bulletin No. U-172, 2. *Accord. Tweten V. U.C.C.*, (Ore. Cir Ct., 1955), cited in 1 CCH UNEMP. INS. REP., FED. § 2300, p. 2421 (1959).

¹⁰ The UAW's proposal was that all workers would be guaranteed forty hours a week. The employer's liability for guaranteed payments to any worker for any week was to be reduced, however, by an amount equal to the basic state unemployment compensation benefit which the worker became entitled to receive for that week. Unless otherwise directed by the employer, a worker laid off for a full week was to be required to register with the state employment service and accept suitable employment. The standards of suitability were to be specified by the agreement, without regard to the standards contained in the state unemployment compensation laws, if any, in order to protect workers against pressure to accept jobs paying sub-standard wages or having sub-standard working conditions (a function which the state standards were originally designed to fulfill). The plan was to be administered, according to the proposal, by a board of administrators who would be empowered to interpret the terms of the guarantee provisions and to decide all questions involving eligibility for payments thereunder, including the amount and duration of payments due any worker, whether the work offered was suitable, etc. Preparing a Guaranteed Employment Plan That Fits UAW Members Like a Glove—UAW, Detroit, Michigan (1954).

In this connection, it is interesting to note that the Latimer Report, *supra* note 7, suggested the integration of wage guarantees with the unemployment insurance program. Many other GAW proposals in the early '50s actually followed this pattern, which was a distinct departure from the earlier plans of this type. Eberling, *supra* note 8, at 464-65.

dependent board of trustees composed of company and union representatives, and an impartial chairman. The company contributes to a trust fund five cents per hour for each hourly paid worker. The contributions may be discontinued whenever the fund reaches fifty million dollars. The benefit payments are made from this trust fund. Workers are eligible only if they are laid off, having no vested interest in the fund. If a worker never becomes unemployed, leaves his work voluntarily, or is discharged for misconduct, he is not eligible for the benefits provided. The maximum duration of benefits under this plan is twenty-six weeks in any one year, and the maximum weekly benefit is \$25.00. By its terms, the Ford plan is directly integrated with state unemployment insurance laws, as well as contingent in the first instance upon rulings favorable to the plan by Internal Revenue and the Wage and Hour Division.¹¹

The great majority of other existing supplemental unemployment benefit plans follow the basic pattern set by the Ford plan. Plans of this type have been established by General Motors, Chrysler and American Motors, as well as by the major producers in the steel industry,¹² rubber,¹³ and American and Continental Can Companies. Although the details of these plans vary somewhat,¹⁴ they have the same tie-in with the state unemployment insurance laws.

¹¹ See, pamphlet published by the Ford Motor Company, Dearborn, Michigan, *The Ford Supplemental Unemployment Benefit Plan* (1955).

As explained in this pamphlet: "Integration with state unemployment compensation systems is an essential condition to the effectiveness of the Ford Supplemental Unemployment Benefit Plan. Before the benefit payments can start, rulings must be obtained in states in which the company has 2/3 of its hourly working force that simultaneous payment of a Plan benefit shall not reduce or eliminate the state unemployment benefit for the same week." In an effort to provide an answer for any unfavorable rulings which might be obtained, an alternate payment plan was provided under which a laid off worker would draw unemployment insurance for two or three weeks, then collect a cumulative lump-sum payment for those weeks under the private plan, it being expected that the only loss in state payments would be for the weeks in which the private lump-sum payment was received. As it happened, however, favorable rulings were obtained from the required number of states prior to the June 1, 1956, date on which the supplemental payments were to commence. In addition, it was explained that the plan would not go into effect until the company had received favorable rulings recognizing, (1) that the company's contributions to the trust fund would be deductible expenses for income tax purposes, and (2) that such contributions would be excluded in computations under the Fair Labor Standards Act. These rulings were also obtained from the two agencies involved.

¹² United States Steel, Bethlehem, Republic, and 9 other steel companies.

¹³ Goodyear, Firestone, Goodrich, and U.S. Rubber.

¹⁴ The American Can and steel company plans, for instance, provide for maximum duration of fifty-two weeks, twice as long as the Ford plan. The maximum weekly benefit is the same under these two plans for the first twenty-six weeks, but thereafter is increased to \$46.80 in the case of American Can, and \$47.50 for U.S. Steel; both plans providing for additional allowances of \$2.00 per dependent up to a maximum of four dependents. The rubber company plans

The plans adopted by Pittsburgh Glass and Libby-Owens-Ford, sometimes referred to as the Income Security plans, are basically different in that an independent account is established within the trust fund for each worker. The worker in effect acquires a vested interest in his own account since he may collect the weekly benefit whether he is out of work because of a lay-off by the company or illness. If he quits or dies, the balance of his account is payable to him or his survivors. Under these plans, there is no integration with the state unemployment insurance laws. Like the Ford plan, however, these plans are administered by an independent board of trustees, and are fundamentally designed to supplement state unemployment payments.¹⁵

The interest of the Unions in supplemental benefits during periods of unemployment undoubtedly arose as a direct result of their inability to obtain more liberal provisions in the state unemployment insurance laws through legislative amendment.¹⁶ One of the clearest demonstrations of this is the provision for a total combined weekly benefit, which includes payments under the applicable state law. Under the auto, steel, and rubber company plans, the maximum total combined benefit is not to exceed sixty-five per cent of the worker's after-tax, straight-time weekly wage. This, of course, is substantially above the maximum provided under most state laws at the present time, but approximately equal to the maximum recommended more than ten years ago.

Legal rulings on SUB show an interesting pattern. Of the states ruling on the income security type of plan, it was uniformly held, shortly after the adoption of the plan by the glass companies, that payments concurrent with weekly benefits under the state unemployment insurance laws

are administered by the company in each case, instead of an independent board of trustees. BES Bulletin No. U-172, table 1.

¹⁵ Seven Hawaiian pineapple companies have adopted a plan which covers workers affected by a permanent reduction in force by providing private weekly benefit payments in the event that unemployment compensation is not payable under the Hawaiian Employment Security Law (for reasons of non-coverage). This plan is more like a severance pay provision, there being no provision for a trust fund to finance the payments. The east coast shipping operators also have a plan which provides that a seaman is to receive \$15.00 per week for weeks with respect to which he also receives state unemployment insurance payments; but if he is not entitled to such state benefits, he will receive \$30.00 per week under the plan. Maximum yearly benefits are limited to \$180.00 per seaman. BES Bulletin No. U-172, 8.

¹⁶ See, Eberling, *supra* note 8, at 466. Time and again, bills were introduced, with strong labor backing, to liberalize the state laws both with respect to maximum duration and maximum benefit amounts, as well as less stringent disqualification provisions. These efforts met with determined opposition from various sources, and more often than not experienced little or no success. Even today, the great majority of state laws have failed to come up to the minimum recommendations of the agency entrusted with the administration of the federal aspects of the unemployment insurance program.

were permitted.¹⁷ The reasoning in support of this position seemed to be that the contributions by the employer amounted to wages when paid into the worker's account, and therefore were not wages when paid out of the account as benefits to the recipient during a subsequent week of unemployment.¹⁸

Of the forty-five states which had ruled on the Ford type plan by February, 1958, forty-one decided that supplementation was permissible without cancellation of, or deduction from, the benefits provided under the state unemployment insurance acts.¹⁹ Of the four states which adopted a contrary view, North Carolina and Ohio did so by agency rulings, and Indiana and Virginia took specific legislative action.²⁰

The Administrator of the Ohio Bureau of Unemployment Compensation, in support of his ruling, reasoned that the payments under the Ford plan were "compensation for personal service" and amounted to wages within the meaning of the applicable definitions of the Ohio Act. It was therefore held that a claimant's benefits under Ohio law would have to be reduced by the amount of any supplemental benefit payments. The ruling relied heavily upon the decision of the United States Supreme Court in the *Nierotko* case,²¹ and upon the circumstance that in June, 1955, the Ohio Senate, by a vote of twenty-one to twelve, had defeated a bill which would have amended the Ohio Unemployment Compensation Act so as to specifically authorize supplementation, and in November of the same year a referendum, which included an express amendment permitting supplementation along with other amendments to the Act, was defeated by the electorate. In contrast, the rulings in most of the other states held that the supplemental unemployment benefit under the Ford plan was neither wages, remuneration, nor earnings, and that no work or service

¹⁷ Rulings to this effect were obtained from the Attorney General in California, Michigan, Oklahoma, and West Virginia; favorable agency rulings were issued in Arkansas and Ohio; and Legislative approval was obtained in Indiana in 1957. BES Bulletin No. U-172, table 4.

¹⁸ BES Bulletin No. U-172, 19. This position appears inconsistent with the ruling of the Internal Revenue Service that benefits paid to recipients under the income security type of plan amount to wages for FICA and income tax withholding purposes. *Id.*, table 2.

¹⁹ In twenty-eight of the states, this interpretive ruling was made by the state Attorney General; in nine states, by a ruling of the state employment security agency; and in the case of three states and Hawaii, by legislative amendment. BES Bulletin No. U-172, table 3, and addendum.

²⁰ BES Bulletin No. U-172, 11.

²¹ *Social Security Board v. Nierotko*, 327 U.S. 358 (1946), in which it was held that the back pay awarded under an NLRB decision amounted to remuneration for services within the meaning of the Old Age and Survivors Insurance provisions of the Social Security Act. The Supreme Court's decision, of course, supported the worker's claim that such "pay" should be credited to his wage record, and was based in part upon the effect of the Board's ruling that the worker's employment status had not been effectively terminated.

was performed within the week of unemployment for which the supplemental payment was to be made.²²

In Texas, it was held that payments under the Ford plan were wages, but that they were not applicable to the period for which they were paid, being referable rather to the earlier period in which they were actually earned and during which the worker was in an employment status.²³

Two early efforts to attack the favorable rulings in a court of law were unsuccessful. In Connecticut, the State Association of Manufacturers filed a tax-payer's suit to restrain the State Employment Security Agency from paying unemployment insurance benefits in cases where supplemental unemployment benefits were to be paid for the same weeks. The Superior Court of Hartford County dismissed the suit on the ground that the association lacked sufficient direct interest to maintain it.²⁴ In Illinois, two employers brought suit as taxpayers to restrain the Illinois Agency from paying benefits for weeks with respect to which supplemental unemployment benefits would be paid. This suit was also dismissed on the same grounds.²⁵

In California, however, a base period employer appealed from a determination of the state employment security agency allowing benefits to a claimant who was also receiving supplemental benefit payments under the Chrysler agreement, in accordance with the ruling of the California Attorney General. The referee ruled that the supplemental unemployment benefits were remuneration for personal services and, therefore, wages within the meaning of the definition in the state statute; and that the state unemployment benefit payable to the claimant should therefore be reduced by the amount of the supplemental benefit payment. This ruling

²² BES Bulletin No. U-172, 14. For a discussion of some of these rulings, see Note, 69 HARV. L. REV. 362 (1955).

²³ The Texas Supreme Court had held that state unemployment insurance benefits themselves amounted to "wages or compensation." *Friedman v. American Surety Company of New York*, 151 S.W.2d 570 (1941). But in a later case, involving severance pay, the distinction which the Attorney General makes was recognized by the Texas court. *Western Union Telegraph v. Texas Employment Commission*, 243 S.W.2d 217 (1951).

²⁴ *Manufacturers Association of Connecticut, Inc. v. Administrator*, 20 Conn. Super. 108, 125 A.2d 317 (1956).

²⁵ *Barco Mfg. Co. v. Warren Wright*, 10 Ill. 2d 157, 139 N.E.2d 227 (1956), in which the court said that the payment of supplemental benefits did the petitioners no harm, legal or actual. In the words of the court: "They do not serve to increase, one iota, the involuntary contributions paid by them, or the unemployment compensation benefits paid under the act. . . . Since the petitioners have not shown that they will be harmed financially by the conduct complained of, or that the relief prayed will protect any legal interest which they may have, we find that the trial court acted within the bounds of its legal discretion in denying the petition to file the complaint." *Id.*, 10 Ill.2d at 165, 166, 139 N.E.2d at 232.

was eventually affirmed by the Superior Court for Los Angeles County.²⁶

The Ohio court test followed much the same pattern as the case in California. One Posey, an employee of the Republic Steel Corporation, was laid off in the summer of 1957. His application for benefits under the Ohio Unemployment Compensation Act was allowed and he was paid the sum of \$33.00 for the week ending September 7, 1957, plus a dependency allowance of \$6.00. Subsequently, Posey informed the Bureau that he had received \$31.00 under the terms of the Republic Steel agreement. He was then ordered to repay \$29.00 of the amount he had received under the Ohio law. Posey appealed to a referee, who sustained the decision of the Administrator, the Board of Review affirmed the referee's decision, and the matter was then appealed to the Common Pleas Court of Mahoning County. The Board of Review decision was reversed by the Common Pleas Court, and this decision was affirmed by the Court of Appeals. The Supreme Court, however, saw the matter in the same light as the Administrator, and finally reversed both lower courts.²⁷

The majority of the Ohio Supreme Court, in a per curiam opinion, followed much the same reasoning as the Administrator had used in his earlier ruling, even to the extent of relying upon, and quoting at length from, the *Nierotko* decision.²⁸ In answer to the contention that supplementation was authorized by the express terms of Section 4141.36, Revised Code,²⁹ the Court said that a study of the statute disclosed "that clearly its purpose is to prevent an employer from evading the expense of unemployment compensation by shifting it to his employees, and that the last sentence thereof (section 4141.36) clearly refers to voluntary arrangements by and between employees and not to the type of supplemental benefit plan involved herein."

Justices Taft and Zimmerman took vigorous exception to the ruling of the majority, suggesting that their decision resulted entirely from the inclination to find an intention which had not been expressed by the General Assembly and which could not reasonably be implied from the words of the statute. These two justices thought that the payments under the supplemental unemployment benefit plan did not represent compensation for personal services, and did not represent payment for anything done during the week in issue. They also felt that the language of the last sentence of Section 4141.36, Revised Code, did in fact apply since the only

²⁶ *Morris Furniture Mfg. Co. v. Employment Security Commission* (Calif. Super. Ct. 1958), cited in 1 CCH UNEMP. INS. REP., FED. § 2300, p.2421 (1959).

²⁷ *United Steel Workers of America v. Doyle*, 168 Ohio St. 324, 154 N.E.2d 623 (1958).

²⁸ Note 21, *supra*.

²⁹ Prior to amendment, the section provided that prior provisions "do not affect the validity of voluntary arrangements by which employees individually or collectively agree to make contributions for the purpose of securing benefits in addition to those provided" by other sections of the Act.

difference between the arrangements referred to therein and supplemental unemployment benefits was that, instead of "collectively" agreeing "to make contributions" directly themselves for the purpose of securing benefits in addition to those provided by the act, the employees had collectively made an agreement with their employer under which the employer is to make contributions for their work. Thus, it is reasoned, the workers themselves were in effect making the contributions, since they had been obtained through collective bargaining.

The majority opinion in the *Doyle* case concluded with the following observation:

If such a plan of supplemental unemployment benefits is to be approved in this state, that approval should not be left to mere inference but should be placed on the sound basis of definite statutory or constitutional amendment.³⁰

With that invitation still ringing in their ears, and with the after-effects of the recession of 1958 very much before them, the members of both Houses of the General Assembly in 1959 elected to pass the amendments referred to at the beginning of this article. It may be fortunate that circumstances³¹ combined to bring about this result, since there was formidable opposition to the very last. It may be presumed that many of the same groups who fought the unemployment insurance program in the beginning, and who have periodically opposed amendments to liberalize the state laws and keep the program up-to-date, were behind the opposition to the solution through private supplementation. In any event, the issue has finally been settled in Ohio, at least for the present.

The same legislative turn of events occurred in 1959 in Indiana and California. The California amendment followed the unfavorable court ruling in that state, and the Indiana amendment reversed the earlier legislative action having precisely the opposite effect.

In Indiana, despite the prior legislative prohibition, eligible unemployed workers had been able to collect private benefits under the supplemental plans, including retroactive payments, in preference to payments under the Indiana law. Not even cumulative lump-sum SUB payments had been permitted under the rulings of the Ohio Administrator. Supplemental unemployment benefit payments which otherwise would have been made to eligible workers in Ohio were placed in escrow pending the outcome of either the pending litigation or legislative action. It is understood that the emergency legislation incorporated in Amended Sub-

³⁰ Judge Stewart went even further, pointing out that the General Assembly convened early the following month and doubtless would have the problem "in its lap." For further advocacy of this approach, see Note, 69 HARV. L. REV. 362, 372 (1955).

³¹ The election results in the Fall of 1958 undoubtedly were the biggest single factor of all.

stitute House Bill No. 820 made it possible to pay out the amounts held in escrow for earlier periods of unemployment.³²

It remains to be seen what future course the unemployment insurance program will follow. It is unlikely that any major extension of private supplemental unemployment benefit plans will occur in the immediate future. From the experience of the past, it is also optimistic to expect a sudden voluntary trend toward more liberal amendment to the unemployment insurance acts at the state level. Progress cannot be prevented indefinitely, however, and if one course or the other is not adopted, more liberal federal standards, incorporated in the federal Social Security Act, compelling state action in the same manner as when the state laws were first enacted, is a distinct possibility.

³² BES Bulletin No. U-172, Addendum (October, 1959).